

**Add Section 6592.6 to the Revenue and Taxation Code to impose interest on a daily basis in cases where the Board, itself, meeting as a public body finds, taking into account all facts and circumstances, that it would be inequitable to impose an entire month's interest on a prepayment or payment made one day late, under specified circumstances. Similar provisions would be incorporated into the special tax and fee laws administered by the Board.**

**Source: Honorable Michelle Steel**

#### **Current Law**

Under existing law, persons who are late in payment of their tax obligations are required to pay a penalty of 10 percent of the tax, plus monthly, simple interest on those unpaid taxes from the date the tax was due to the date upon which they are paid. In the case of a late prepayment, the law imposes a 6 percent penalty. The current rate of interest for late payments is 11 percent. Under current law, interest accrues on any unpaid tax, to the end of the same month of the date of payment.

Regardless of whether a taxpayer makes a tax payment two days after the due date of a return, or at the end of the month following the due date, the taxpayer, under current law, is charged interest for the entire month. In the case of electronic funds transfers (EFT), a payment made after the 3:00 p.m. deadline is likewise subject to an entire month's interest charge (any taxpayer whose average monthly tax payments are \$10,000 or more is required to pay their sales and use taxes by EFT).

Under Section 6592 of the Sales and Use Tax Law, the Board has authority to relieve a late payment penalty when the Board finds that the taxpayer's failure to make a timely payment is due to reasonable cause and circumstances. However, interest on the late payment is generally not relievable (except in cases of a disaster or where the failure to pay the tax timely was due to an unreasonable error or delay by a Board employee). Consequently, aside from these two exceptions, whether a taxpayer is 10 minutes late, as in the case of an EFT taxpayer, or 28 days late, an entire month's interest is assessed, regardless of the reason for the late payment.

#### **Background**

During a 47-year period ending in 1997, the Board's administrative policy was to in essence allow a 1-day grace period in cases where a mailing of a return or payment was postmarked one day after the due date. For example, if a remittance was due by law on April 30, but was postmarked May 1, the payment was nevertheless deemed to have been made timely. This policy recognized the complications in the U.S. Postal Service and gave the taxpayer the benefit of the doubt that the mailing was actually made timely, but that the postmark did not reflect the actual date in which it was placed in the mail. However, the Board's legal staff reviewed this policy and opined that there was no legal basis in which the Board could legally provide this 1-day grace period. The Board therefore

eliminated the 1-day grace period policy. As a consequence to the Board's change in policy, staff workload had increased significantly. This change resulted in a large increase in late billings, followed by hundreds of taxpayers filing declarations of timely mailing requesting that the penalty and interest be cancelled, with over half of the declarations filed attributable to a mailing that was postmarked only one day after the due date. This change in policy has also had a negative impact with taxpayers who were usually otherwise in compliance with the law.

Many taxpayers are required to file returns on a monthly basis, or a quarterly basis, or on a quarterly basis with two prepayments within each quarter. Due to the frequency of the return filings, it seemed logical to authorize the Board to adopt a uniform policy of acceptance of returns based on considerations such as current U.S. Postal Service and technology available for filing. Therefore, in the 1999 Legislative Session, the Board sponsored AB 1638 (Ch. 929) to allow the Board to reinstate its prior practice of allowing taxpayers a uniform grace day with respect to their filings under all Board-administered taxes and fees. However, this uniform grace day is only allowed with respect to remittances, claims for credit or refund, documents, or returns that are delivered to the Board by United States mail or through a bona fide commercial delivery service, and does not apply to electronic payments of tax.

### **This Proposal**

This proposal would change the method of computing interest on late payments in special situations where the Board, itself, finds that it is inequitable to impose an entire month's interest. Specifically, this proposal would provide that if the Members of the Board, meeting as a public body, find, taking into account all facts and circumstances, that it is inequitable to compute interest on a monthly basis when a taxpayer is only one day late in making a payment, interest shall be computed on a daily basis, provided 1) the taxpayer is relieved of the late payment penalty on the late prepayment or late payment because the Board found that the taxpayer's failure to make that payment in a timely manner was due to reasonable cause and circumstances beyond the taxpayer's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, 2) the payment of the tax or prepayment was, in fact, only one day late, and 3) the person files a request for an oral hearing before the Board.

If the Board makes such a finding, simple, daily interest would be imposed only for that one day the payment was late.

This proposal would also state it is the intent of the Legislature that the Board applies these provisions strictly and narrowly on a case-by-case basis and only in special circumstances.

*SECTION 1. Section 6592.6 is added to the Revenue and Taxation Code to read:*

6592.6. (a) If the board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in Section 6591.5, interest shall be computed at the modified adjusted daily rate from the date on which the tax or prepayment was due until the date of payment, if all of the following occur:

(1) The payment of tax or the prepayment was made one day after the date the tax or prepayment was due,

(2) The person was granted relief from the penalty pursuant to Section 6479.4 or 6592 on that payment of tax or prepayment.

(3) The person files a request for an oral hearing before the board.

(b) For purposes of this section, "modified adjusted daily rate" means the modified adjusted rate per annum as defined in subdivision (a) of Section 6591.5 determined on a daily basis by dividing the modified adjusted rate per annum by 365.

(c) For purposes of this section, "board" means the Members of the State Board of Equalization meeting as a public body.

SEC.2. It is the intent of the Legislature that California's penalty and interest regime foster and maintain the current high level of compliance, provide appropriate costs and sanctions for noncompliance, and provide a reasonable and administrable degree of latitude for individual taxpayer circumstances and errors. It is the intent of the Legislature that in enacting this Act, the Board strictly and narrowly apply its provisions on a case-by-case basis and only in special circumstances.